

DEPOSITION OF AMERICUS MITCHELL

September 22, 2006

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**CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:**

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1 belonged to Central of Georgia Railroad
 2 Company, and through the years it changed
 3 ownership. I don't know who owns it now to
 4 tell you the truth.
 5 Q. But you don't own that particular piece of
 6 ground where the railroad sits?
 7 A. No.
 8 Q. But you didn't notify the owners of that
 9 property before -- that you were going to do
 10 your burn?
 11 A. Never have.
 12 Q. Now, getting back to what we were talking
 13 about when the fire department arrived, how
 14 late did you stay out there with the fire
 15 department on that Saturday evening on the
 16 12th?
 17 A. I was out there until I guess 9:30 or ten
 18 o'clock that night.
 19 Q. When you left that night and when the fire
 20 department left that night, was the fire under
 21 control?
 22 A. The fire was under control, but they were
 23 standing by.

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1 Q. Is that the reason they came back out the next
 2 morning?
 3 A. No. The old wood was so rotten it kept --
 4 they would put it out, and then it would
 5 smolder and then it would catch on again, and
 6 they would have to go back out there. The
 7 only water they had was on the fire truck
 8 itself.
 9 Q. Yes, sir.
 10 And did they just bring the fire truck up
 11 the railroad and --
 12 A. They got the fire truck as close to the fire
 13 as they could and ran a hose.
 14 Q. When they went back out there the next
 15 morning, you say you were not present on that
 16 Sunday morning; is that correct?
 17 A. That's correct.
 18 Q. Was it just your son out there that met with
 19 the fire department that morning?
 20 A. As far as I know.
 21 Q. Do you know in talking with your son or
 22 anybody since if the fire was still smoldering
 23 that Sunday morning?

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1 A. During the time the truck was there, the
 2 smoldering would catch up and they would go
 3 back there and put it back out. It was
 4 fortunate that they didn't leave because of
 5 the old smoldering debris that was around the
 6 trestle.
 7 Q. To your knowledge did the fire department get
 8 everything under control that Sunday? Did
 9 they completely extinguish the bridge when
 10 they were out there?
 11 A. Yes.
 12 Q. Now, you mentioned the debris around the
 13 trestle. Can you describe to me what debris
 14 you're talking about being around the trestle?
 15 A. Well, in my opinion what caused the fire was
 16 the tremendous growth of kudzu that had
 17 enveloped the old trestle. In years past the
 18 maintenance crews would prevent that from
 19 happening. The right-of-way that they owned,
 20 they would police it and they would control it
 21 by equipment they had on the flat cars. They
 22 had a type of Bush Hog that would clear the
 23 right-of-way, and they also had a tank truck

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1 with boom sprayers that would spray herbicide
 2 around the right-of-way to prevent any growth
 3 of kudzu and flammable grasses that normally
 4 grow around the trestle.
 5 Q. How often do you go to that piece of your
 6 property? Are you down there on a regular
 7 basis to see what type of activity is going on
 8 down there?
 9 A. I'm on that property quite often, but I don't
 10 go to where the trestle is located.
 11 Q. So if the railroad indicated that they had
 12 sprayed that particular area at least twice in
 13 the year prior to this burn and had maintained
 14 a machine cutting on that at least once in
 15 that year prior, would you have any way to
 16 refute that?
 17 A. All I know is the old trestle had -- You know
 18 kudzu, they claim it grows 3 feet in one
 19 night, you know.
 20 Q. Yes, sir.
 21 A. All I know is kudzu had enveloped the thing.
 22 Q. If you had maintained other fire breaks -- If
 23 you had done a -- bulldozed a fire break

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<p>1 A. I moved out here in 1958, and the Central had 2 regular crews policing that railroad whenever 3 they felt it was necessary. They had 4 maintenance crews, you know, took out old 5 cross ties and put new ones in and policed the 6 area to keep it in good shape. 7 Q. Other than your casual interaction with the 8 railroad folks and them coming and going on 9 your property, do you have any other knowledge 10 of the railroad or the railroad's procedures 11 in maintaining railroads? 12 A. I was quite familiar with the old crews that 13 the Central of Georgia had, and subsequent -- 14 I think it was Illinois Central bought them 15 after that. And later on it was -- Let's 16 see. I don't know who had the railroad after 17 Illinois Central had it, but they maintained 18 it. They had a working crew that went through 19 there and kept it in good shape. 20 Q. When did you become aware that Georgia 21 Southwestern Railroad was operating on this 22 line? 23 A. When I discovered that my roads into my</p>	<p>1 EXAMINATION 2 BY MR. ALLRED: 3 Q. We were talking about this fire incident 4 report earlier. 5 (Defendant's Exhibit 1 marked for 6 identification.) 7 Q. This is the fire incident report that we were 8 talking about earlier. Just to make sure that 9 we've got this clear on the record, does that 10 state February 12 of '05? 11 A. Yes. 12 Q. The alarm was at 5:28? 13 A. Yes. 14 Q. And they arrived at 5:38, right? 15 A. Yes. 16 Q. So you did call them on the 12th? 17 A. Yes. 18 Q. And with regard to the maintenance of the area 19 around the trestle -- 20 A. What, now? 21 Q. With regard to the maintenance of the area 22 around the trestle and on the White Oak spur 23 in general, would you say there was more or</p>
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<p>1 property was blocked by those cars. 2 Q. And how did you determine that Georgia 3 Southwestern Railroad maintained this railroad 4 and owned those cars? 5 A. I called either the city or somebody and found 6 out who it belonged to. 7 Q. Did you talk to anybody from Georgia 8 Southwestern Railroad when they came out to 9 move the cars? 10 A. Yes. 11 Q. Do you recall the fellow that you talked to? 12 A. No. But I might have his name in my files 13 somewhere. 14 Q. But you did know that Georgia Southwestern 15 Railroad owned or operated this line out here 16 after you got them to move the cars? 17 A. Yeah. I think I called the city to find out 18 about it. 19 MR. JOHNSON: I think that's all I 20 have. 21 MR. ALLRED: I've got just one or 22 two questions for you, 23 Mr. Mitchell.</p>	<p>1 less maintenance done on the spur after 2 Louisiana Pacific closed? 3 A. I'd say there was little or no maintenance on 4 it after that date as far as I know. 5 Q. So there was less after the Louisiana Pacific 6 plant closed? 7 A. Uh-huh (positive response). 8 Q. After that time did you ever see any tank 9 sprayers or cutting equipment out there? 10 A. No. 11 Q. If you would, tell me a little bit about the 12 condition of the trestle prior to the fire. 13 A. The trestle was in bad shape. I found out 14 that some -- I assume they were youngsters in 15 four-wheelers had been crossing on that 16 trestle, possibly coming in from Barbour Lane, 17 not through my property but hitting the 18 railroad at Barbour Lane and going through 19 there. And I was particularly disturbed that 20 those cross ties were in such bad shape that 21 they would cause an injury. Of course, those 22 young bucks on those things had no business 23 running four-wheelers across them anyhow, but</p>

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1 I had no way of policing who went up and down
 2 the tracks.
 3 Q. So were there rotten cross ties on there?
 4 A. Yeah.
 5 Q. Were there any cross ties missing?
 6 A. I don't know if there was any missing, but
 7 they were all in bad shape.
 8 Q. So in your estimation, you didn't feel like
 9 the kids should be riding the four-wheelers
 10 across there?
 11 A. Huh-uh (negative response).
 12 Q. The first picture here on the page of
 13 Plaintiff's Exhibit 4 with the sticker that's
 14 actually marking it, this photograph here, is
 15 that representative of what the trestle looked
 16 like prior to the fire, this particular cross
 17 tie?
 18 A. In several areas it was.
 19 Q. So there were cross ties that had actually
 20 rotted out and they had begun to fall apart?
 21 A. That's true.
 22 MR. ALLRED: I believe that's all I
 23 have.

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1 an individual,
 2 Defendant.
 3 In The U.S. District Court
 4 For the Middle District of Alabama
 5 Northern Division
 6 2:06CV3-DRB
 7 on Friday, September 22, 2006.
 8 The foregoing 58 computer printed pages
 9 contain a true and correct transcript of the
 10 examination of said witness by counsel for the
 11 parties set out herein. The reading and signing of
 12 same is hereby waived.
 13 I further certify that I am neither of kin
 14 nor of counsel to the parties to said cause nor in
 15 any manner interested in the results thereof.
 16
 17
 18
 19
 20
 21
 22 Pamela A. Wilbanks, Registered
 23 Professional Reporter and
 Commissioner for the State
 of Alabama at Large.

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1 MR. JOHNSON: That's all I have.
 2 (Deposition concluded at
 3 approximately 11:35 a.m.)
 4
 5 *****
 6
 7 FURTHER DEPONENT SAITH NOT
 8
 9 *****
 10
 11 REPORTER'S CERTIFICATE
 12 STATE OF ALABAMA:
 13 MONTGOMERY COUNTY:
 14 I, Pamela A. Wilbanks, Registered
 15 Professional Reporter and Commissioner for the State
 16 of Alabama at Large, do hereby certify that I
 17 reported the deposition of:
 18 AMERICUS C. MITCHELL
 19 who was first duly sworn by me to speak the truth,
 20 the whole truth and nothing but the truth, in the
 21 matter of:
 22 GEORGIA SOUTHWESTERN RAILROAD,
 23 Inc., a Corporation,
 Plaintiff,
 Vs.
 AMERICUS C. MITCHELL, JR.,